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Supreme Court of the United States

October Term, 1977

No. 77-581

R. H. MACY & CO., INC., and
BAMBERGER'S, a Division of
R. H. MACY & CO., INC.,

Petitioners,

vs.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
MICHIGAN AND MICROELECTRONIC
SYSTEMS CORPORATION OF AMERICA,
as Real Party in Interest,

Respondents.

/

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES DISTRICT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1977

NO.

R. H. MACY & CO., INC., and BAMBERGER'S, a Division of R. H. MACY & CO., INC.,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND MICROELECTRONIC SYSTEMS CORPORATION OF AMERICA, as Real Party in Interest,

Respondents.

---/

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents hereby respectfully submit this Brief in Opposition to a Petition for a Writ of Certiorari to review the Order and Decision of the United States Court of Appeals for the Sixth Circuit denying Petitioners' Application for a Writ of Mandamus to the United States District Court for the Eastern District of Michigan.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Whether the Court of Appeals properly denied Petitioners Application for a Writ of Mandamus when the facts clearly show (i) a total lack of the "exceptional circumstances" required to justify the granting of this extraordinary remedy; (ii) a case which is legally and factually difficult in which the District Court exercised its discretionary powers; (iii) the existence of a readily available alternative remedy; and (iv) the Petitioners' failure to demonstrate that their right to the issuance of the Writ is clear and undisputable

II. Whether the District Court's assertion of Limited In Personam Jurisdiction over Petitioners is in accordance with applicable Michigan Statutory law or violates the due process provision of the Fourteenth Amendment to the United States Constitution in view of the facts which clearly indicate that (i) the Michigan Statute relied upon by the District Court is to be given the broadest allowable construction consistent with due process requirements; (ii) Petitioners purposely availed themselves of acting in Michigan through the execution of a contract, a part of which was to be performed in Michigan, which actions give rise to the instant litigation and (iii) the assertion of Limited In Personam jurisdiction is reasonable in light of the existing facts.

COUNTERSTATEMENT OF THE CASE

The statement by Petitioners that "the Court succinctly summarized" the underlying facts relating to the sales transaction between Petitioners and Respondents (Petitioner, P. 5) improperly implies that this summary was intended to cover all "events relevant" to the sales transactions. (Petition, P. 5, 1st Paragraph).

There are other relevant events which were not "succinctly summarized" which occurred in Michigan and which support the District Court's ruling. Pursuant to Macy's shipping order, delivery of the merchandise was to a preferred carrier within the State of Michigan for shipment F.O.B. Madison Heights, Michigan. Therefore, pursuant to the applicable provision of the Michigan Uniform Commercial Code, risk of loss and title to the

goods passed to Petitioners in the State of Michigan. Respondents submit that Petitioners assertion that "every significant action" occurred other than in Michigan (Petition, P. 7) is factually untrue.

The District Court's remark that "Macy's acted as a passive, out-of-state buyer of an in-state product" must be read with the opinion findings that such status was an arguably sufficient basis for Limited In Personam jurisdiction. It is not, therefore, conclusive, as asserted by Petitioners, that the District Court's decision in regard thereto "exceeds the limits of constitutional power". (Petition, P. 7). Further, the statement by Petitioners that the District Court "in effect, obliterated state lines and the Constitutional limits of State Power" (Petition, P. 7) is conclusory and out of context.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS ACTED IN ACCORDANCE WITH ESTABLISHED LEGAL PRECEDENT IN DENYING PETITIONERS' APPLICATION FOR A WRIT OF MANDAMUS BECAUSE THE FACTS OF THIS CASE CLEARLY INDICATE THE ABSENCE OF THE EXCEPTIONAL CIRCUMSTANCES WHICH WILL JUSTIFY THE GRANTING OF THIS EXTRAORDINARY REMEDY.

As early as 1872, this Court indicated that in cases involving judicial duty, the purpose of the Writ of Mandamus is to direct a court to exercise its judicial discretion or judgment, without direction as to the manner in which it shall be accomplished. Further, this Court stated that a Writ of Mandamus should not be issued to correct a judicial error. *Ex Parte Newman*, 81 U.S. 152 (1872). These principals are supported by numerous decisions, the more recent of which tend to greatly restrict the situations in which a Writ of Mandamus can properly be applied.[1]

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1. *Kerr* v. *U.S. District Court*, 426 U.S. 394 (1976); *Will* v. *United States*, 389 U.S. 90 (1967); *BancOhio Corp.* v. *Fox*, 516 F. 2d 29 (6th Cir. 1975); *Grace Lines, Inc.* v. *Motley*, 439 F. 2d 1028 (2nd Cir. 1971); *Carter* v. *Seamans*, 411 F. 2d 767 (5th Cir. 1969), (cert. denied 397 U.S. 951); *Thornton* v. *Corcoran*, 407 F. 2d 695 (D.C. 1969); *Schillinger* v. *U.S. Dept. of Justice, Federal Bureau of Investigation*, 259 F. Supp. 29, (M.D. Pa. 1966).

The Court of Appeals, in denying Petitioners' Application for a Writ of Mandamus, relied on this Court's decision in *Kerr* v. *U.S. District Court*, 426 U.S. 394 (1976). Mr. Justice Marshall, delivering the Court's opinion, pointed out that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." *Kerr, surpa*, at 402. In addition, this Court established a further condition:

> ". . . (T)he party seeking issuance of the writ have no other adequate means to obtain the relief he desires . . . and that he satisfy "the burden of showing that (his) right to issuance of the writ is 'clear and indisputable' ". *Kerr, supra*, at 403.

Petitioners have failed to convince the Court of Appeals that such exceptional circumstances and conditions exist and indeed they do not. Petitioners have the right to appeal the District Court in the event Petitioners fail to prevail on the merits. Further, there being obvious dispute as to the appropriateness of the District Court's exercise of jurisdiction in this case, Petitioners have not carried the burden of showing a "clear and indisputable" right to issuance of the Writ.

In *Grace Lines, Inc.* v. *Motley*, 439 F. 2d 1028 (2nd Cir. 1971), the Court stated that the purpose of the All Writs Act (28 U.S.C.A. §1651), is to enable federal appellate courts to review by mandamus, non-appealable interlocutory orders which would be the subject of review on appeal from a final judgment. More specifically, according to that Court, "mandamus will lie in the sound discretion of the appellate court, where the trial court has exceeded or wrongfully refused to exercise its judicial power or has committed a clear abuse of discretion". *Id*, at 1029. Indeed, this Court has been quite clear in indicating that the purpose and scope of mandamus is not to control decisions of the trial court, but rather merely to confine the lower court to the sphere of its discretionary power. *Will* v. *United States*, 389 U.S. 90 (1967). It appears equally clear that the standards of "exceptional circumstances" or "clear abuse of discretion" have not been met in the instant case. The Court of Appeals felt it adequate to dismiss the request for a Writ of Mandamus in a one-sentence opinion relying on *Kerr, supra*.

Although a Writ of Mandamus may be granted to confine a court to lawful exercise of prescribed jurisdiction, it is clearly not

to be granted every time there is a dispute involving the jurisdiction of a Federal Court. As stated by the Sixth Circuit Court of Appeals in *BancOhio Corp.* v. *Fox*, 516 F. 2d 29 (6th Cir. 1975):

> "This is not to say that mandamus is appropriate at any time there is an issue of subject matter jurisdiction. *Issuance of the writ is appropriately denied where the question of jurisdiction is factually and legally difficult.*" *Id*, at 33 in citing *Massey-Harris-Ferguson, Ltd.* v. *Boyd*, 242 F. 2d 800 (6th Cir. 1957).

It cannot be denied that the instant case involves factual disputes as well as harsh disagreement regarding the proper exercise of the District Court's discretionary powers. As stated by the Fourth Circuit Court of Appeals in *Holub Industries, Inc.* v. *Wyche*, 290 F. 2d 852 (4th Cir. 1961), quoting from *American Airlines*, v. *Forman*, 204 F. 2d 230 (3rd Cir. 1953):

> "The challenged assumption or denial of jurisdiction must be so plainly wrong as to indicate failure to comprehend or refusal to be guided by unambiguous provisions of a statute of settled common law doctrine. If a rational and substantial legal argument can be made in support of the questioned jurisdictional ruling, the case is not appropriate for mandamus or prohibition even though on normal appeal a reviewing court might find reversible error." *Id*, at 232.

Through no stretch of the imagination or otherwise, can it be argued that the decision of the learned District Judge Feikens and/or the legal position of the Respondents lacks rational and substantial legal and factual merits. Therefore, Mandamus is not appropriate.

Likewise, in order to prevail, Petitioners must show that it has no other adequate remedy. As stated by the Ninth Circuit Court of Appeals in *Hartley Pen Co.* v. *U.S. District Court*, 287 F. 2d 324 (9th Cir. 1961):

> "In our view the remedy is available in an ordinary case within our jurisdiction if ordinary remedies are inadequate and there are present exceptional and extraordinary circumstances which require the issu-

> ance of an extraordinary writ to prevent a grave miscarriage of justice . . ." *Id*, at 328 (Emphasis added). See also *Kerr* v. *U.S. District Court*, 511 F. 2d 192 (N.D. Cal 1975).

In the present case, Petitioners have an adequate remedy by appeal of any final decision of the District Court. Further, the factual circumstances underlying the denial of the writ hardly represent "a grave miscarriage of justice." Granting the writ would only move the trial on the merits to New York where Bamberger's (a New Jersey store) could contend there was no jurisdiction. Jurisdiction would still be a difficult question because Macy's-New York, orders, warehouses, reships, bills and collects centrally for goods shipped all over the United States to its stores and divisions—apparently expecting to send the out-of-state vendor on a jurisdictional egg hunt around the United States searching for proper jurisdiction.

The Court in *Carter* v. *Seamans*, 411 F. 2d 767 (5th Cir. 1969) set forth a three-pronged test for determining the appropriateness of mandamus in a particular case:

> "(1) a clear right in the plaintiff to the relief sought; (2) a clear duty on the part of the defendant to do the act in question; and (3) no other adequate remedy available. In connection with the last requirement, it is important to bear in mind that mandamus does not supercede other remedies, but rather comes into play where there is a want of such remedies. Admittedly, the alternative remedy must be adequate, i.e., capable of affording full relief as to the very subject matter in question." *Id*, at 773.

As illustrated by the preceding authorities, there are diverse criteria and/or requirements which relate to the propriety of the grant or denial of a petition for a Writ of Mandamus in cases involving jurisdictional disputes. The facts of this case make it abundantly clear that:

> 1. No exceptional circumstances exist which justify the granting of Petitioners Application for a Writ of Mandamus, an extraordinary remedy;

> 2. Under no circumstances can the Petitioners satisfy their burden of showing that their right to the granting of the Writ is "clear and indisputable";
>
> 3. The case is factually and legally difficult, involving the District Court's exercise of discretion, and does not involve a refusal by the District Court to adhere to unambiguous or undisputed provisions of statute or law. Substantial and rational legal argument can be made to support the position of Respondent.
>
> 4. Petitioners have an adequate alternative remedy.
>
> 5. The District Court had no "clear duty" to refuse jurisdiction and the Petitioners had no "clear right" to the relief which they sought in the District Court.

For these reasons this Court should deny Petitioners Petition for a Writ of Certiorari.

II. THE ASSERTION OF LIMITED IN PERSONAM JURISDICTION OVER PETITIONERS BY THE DISTRICT COURT, BASED ON THE FACTS OF THIS CASE, DOES NOT VIOLATE ESTABLISHED CONCEPTS OF DUE PROCESS OR TRADITIONAL NOTIONS OF FAIR PLAY AND IS IN ACCORDANCE WITH APPLICABLE MICHIGAN STATUTORY LAW.

Michigan, the forum jurisdiction, has recently held that the "limitations on state power imposed by *International Shoe* and its progeny have been applied narrowly in Michigan, *particularly where an ordinary commercial transaction is involved.*"[2] *Cole* v. *Doe*, 77 Mich. App. 138, 142 (1977) (emphasis added), citing *Dornbos* v. *Atkins Transfer Co.*, Inc., 9 Mich. App. 515; 157 N.W. 2d 498 (1968); *Woods* v. *Edgewater Amusement Park*, 381 Mich. 559; 165 N.W. 2d 12 (1969); *Crane* v. *Rothring*, 27 Mich. App. 189; 183 N.W. 2d 434 (1970).

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2. It is emphasized that "Michigan, like several other jurisdictions, has interpreted its long-arm statute as being the broadest grant of jurisdiction consistent with the Constitutional requirements of due process." (Petitioners' Appendix, P. 4a) *Sifers* v. *Horen*, 358 Mich. 195, 188 N.W. 2d 623 (1971); *Schneider* v. *Linkfield*, 389 Mich. 608 209 N.W. 2d 225 (1973); *Stan Sax Corp.* v. *Siefen Compounds, Inc.*, 69 Mich. App. 768, 243 N.W. 2d 724 (1976).

Michigan Courts have upheld limited personal jurisdiction based upon a single contact with the forum state. *Keifer* v. *May*, 46 Mich. App. 566; 208 N.W. 2d 537 (1973). That "single contact" need not include physical presence within the forum. *In-Flight Devices Corp.* v. *Van Dusen Air, Inc.*, 466 F. 2d 220 (6th Cir. 1972); *Hadad* v. *Lewis*, 382 F. Supp. 1365 (E.D. Mich. 1974); *Mad Hatter, Inc.* v. *Mad Hatters Night Club Co.*, 399 F. Supp. 889 E.D. Mich. 1972. In *McGraw* v. *Matthaei*, 340 F. Supp. 162 (E.D. Mich. 1972), it was stated:

> "Defendant has placed great emphasis on the fact that he was not physically present in the state when he executed the note. This court is of the opinion that one need not be physically present in the state to "transact business within the state". Modern technology has taken us far beyond the point where two men must stand in each other's physical presence to transact business." *Id*, at 164.

The District Court's finding that "Macy's only contact with Michigan was through the order of goods by mail from a corporation in Michigan" (Petitioners' Appendix, P. 4a) is a sufficient contact upon which to base limited in personam jurisdiction even if it were the only basis for jurisdiction.

In the *In-Flight Devices Corp.* case, *supre*, the Court of Appeals for the Sixth Circuit has stated:

> "Again, it must be emphasized that no particular type of physical contact is required as a jurisdictional prerequisite. A letter or a telephone call may, in a given situation, be as indicative of substantial involvement with the forum state as a personal visit by the Defendant or its agents." *Id*, at 235.

Petitioners cite numerous United States District Court, as well as State Court, decisions which hold a "passive" buyer immune from long-arm jurisdiction. Yet, the "passive-active" standard has never been an articulated Constitutional standard of review in such cases. Rather, it has been one of the many factors considered by courts in determining jurisdictional sufficiency. The existence or non-existence of minimum contacts must be established with reference to the facts of a particular case, rather

than on the basis of dogmatic rules or all-inclusive principles. *Velandra* v. *Regie Nationale Des Usines Renault*, 336 F. 2d 292, 295 (6th Cir. 1964). As the Sixth Circuit Court of Appeals pointed out in *In-Flight Devices Corp., supra*:

> "Our emphasis throughout this discussion has been not providing mechanical rules which can be followed with commendable precision, but on realistic appraisals of the merits of any jurisdictional question. This approach is consistent with the broad language of the long-arm statute we construe and the liberalizing trend in the interpretation of due process which has flowed in the wake of the *International Shoe* decision. We believe it is imperative that courts avoid resorting to artificial guidelines which simplify decision making, but obscure the realities of the situation. The courts must consider each long-arm question in relation to traditional notions of fair play which mark the outer limits of due process." *Id*, at 235-236.

The decisions which Petitioner cites, in which jurisdiction was denied over a buyer in the circumstances of Petitioners, were based upon statutes, most of which differ from the Michigan statute from which this case evolves. Many of the jurisdictional statutes from other states are construed in a more limited manner than that of Michigan.[4] These decisions will, therefore, differ and will be more restrictive in terms of the exercise of jurisdiction.

The assertion by a state of in personam jurisdiction over a foreign defendant not present within the territory of the forum, may be predicated upon certain "minimum contacts" of the defendant such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice". *International Shoe Co.* v. *Washington*, 326 U.S. 310; *McGee* v. *International Life Insurance Co.*, 344 U.S. 220 (1957); *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

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4. In fact, only a few jurisdictions in the United States have long-arm statutes similarly as broad as that of Michigan, e.g., N.H. Rev. State. Ann., Sec. 300:11; Ariz. Rules of Civ. Proc. Rule 4(e)(2); Cal. Corp. Code, Sec. 6500, Code of Civ. Proc., Sec. 411; N.H. Civ. Prac. Rules, R.R. 4:4-4; Tenn. Code Ann., Secs. 20-235, 20-236, 20-237; Vernon's Tex. Stat. of 1948, Art. 203(1)(b).

The Sixth Circuit Court of Appeals, based on the landmark decision of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and the later Supreme Court decisions of *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957), and *Hanson* v. *Denckla*, 357 U.S. 235 (1958), has adopted a three-fold mode of analysis for determining the "due process" boundaries of constitutionally permitted in personam jurisdiction:

> "First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Southern Machine Co.* v. *Mohasco Industries, Inc.*, 401 F. 2d 374, 381 (6th Cir. 1968).

The first criteria, purposeful action by the Defendant, is illustrated by the following quotation from *In-Flight Devices Corp., supra:*

> "The "acts" (of defendant) become purposeful if the defendant should have reasonably foreseen that the transaction would have consequences in that state'." *Id*, at 226.

That Petitioners have acted in such a manner is clear. Macy's entered into contract negotiations involving a substantial order for the manufacture and shipment of goods with a firm which it knew was based in Michigan. Petitioners knew that the making, and subsequent breaking, of a contract with Microelectronics must have substantial consequences within the State of Michigan.[5]

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5. The District Court, in accord with this view, has also held that it is enough that a foreign defendant has become involved in Michigan through intentional actions, freely performed. *Mad Hatter, Inc.* v. *Mad Hatters Night Club Co.*, 399 F. Supp. 889 (E.D. Mich. 1975).

Applying the second criteria set forth in *Southern Machine, supra*, it is clear that the cause of action arises from Microelectronic's effort to enforce that contract. Again, the Opinion of the District Court is in accord. (Petition Appendix, P. 7a). Not only have Petitioners negotiated a contract, where delivery was to be performed in Michigan, but they have also become owners of personal property located in Michigan. Respondents' cause of action is to enforce the contract as made and to compel payment for goods that have become the property of Macy's. Simply, the cause of action flows directly from Macy's activities in Michigan.

The third criteria of *Southern Machine, supra*, requires that the act or consequences caused by the defendant have a substantial enough connection with the forum to make the exercise of jurisdiction reasonable. The reasonableness and validity of finding that jurisdiction exists in any case involving "minimum contacts" must be considered with reference to the facts of the particular case. Petitioners argue, that in personam jurisdiction must be based on such contacts with the State as lead to the judgment that it is fundamentally fair to summon and return the defendant to the forum. (Petition, P. 12). Determining "fairness" is an exercise of judicial discretion. The contract, along with the ownership and possession of property in the State of Michigan have been established. Macy's has sufficient contacts in the forum state. These contacts, together with consideration of the largely multi-state nature of Macy's commercial activities, make the exercise of jurisdiction in this case not only fair but reasonable. The District Court indicates in its Opinion, "Distance is no longer a factor . . . In a commercial sense business activity realistically is not concerned with state boundaries." (Petition Appendix, P. 7a). This is not to be interpreted as "obliterating" state lines by dispensing with any minimum contacts by the defendant. Rather, it is one of the many realities of commercial transactions to be considered in determining the reasonableness of the exercise of long-arm jurisdiction once minimum contacts have been established. In this sense, the attitude espoused by the District Court has not "spawned" an unwarranted extension of the reach of State judicial process as asserted by Petitioners, (Petition, P. 12) but has indicated the fundamental fairness of exercising in personam jurisdiction under such circumstances. In fact, this Court has indicated that it is in accord with such a view:

> "... a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other non-residents. In part, this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *McGee* v. *International Life Insurance Co.*, 344 U.S. 220 (1957).

Finally, the underlying purpose of long-arm jurisdiction statutes in general is fairness to the non-resident defendant and a lack of suprise. *In-Flight Devices Corp., supre,* indicates:

> "A purchaser who engages in an essentially one state operation—and occasionally buys an item or two out of state, for instance, is far more likely to be unprepared to deal with out of state litigation than an individual or corporation whose business frequently involves him or it in interstate transactions. The existence of substantial interstate business in general cannot substitute for some direct contacts with the forum state ... but where such direct contact consists primarily of the entering of a contact with a resident of the forum state by the non-resident defendant the general interstate involvement of the defendant is suggestive of the latters expectation that it may be involved in litigation far from its home base." *Id,* at 233-234.

Here, the interstate activities of Macy's and its' subsidiary, Bamberger's, is extensive. It is hardly unfair to Petitioners, or surprising to them, that they are called upon to defend in a forum separate or distinct from their home base. And certainly it does not fly in the face of "traditional notions of fair play and substantial justice" as required in *International Shoe, supra,* to require

Petitioners to defend in Michigan, even though such jurisdiction be based upon minimal contacts with that forum.

III. PETITIONERS ARE ALSO SUBJECT TO MICHIGAN LIMITED IN PERSONAM JURISDICTION BASED UPON THE "OWNERSHIP, USE OR PROFESSION" OF ANY REAL OR TANGIBLE PERSONAL PROPERTY SITUATED WITHIN THE STATE.

Mich. Comp. Laws Ann. 600.715(3) provides in part that:

> "Sec. 715. The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:
>
> * * *
>
> (3) The ownership, use or possession of any real or tangible personal property situated within the state."

Macy's purchase order (Exhibit H to Affidavit of Norman Merinstein, Exhibit F to Petition for Writ of Mandamus) provides that the goods were to be delivered F.O.B. Madison Heights, Michigan. Pursuant to The Uniform Commercial Code, specifically Mich. Comp. Laws Ann. 440.2401(2)(a) and 440.2509(1)(b), (See Appendix "A"), Macy's became the owner of the goods and took possession of the goods (personal property) at the point where risk of loss and title passed to them—*in Michigan*. Macy's further directed Microelectronics to deliver the shipment to a designated "preferred carrier" as its agent to receive the goods. Macy's also imposed the penalty of non-payment of freight charges if these conditions were violated. Microelectronics was not to insure the goods, but merely to deliver them to the Macy's designated carrier *in Michigan*. Thus, Macy's had an insurable interest in goods and undertook risk of loss or damage, and pursuant to Mich. Comp. Laws Ann 600.715(3), acquired ownership and possession of personal property while situated within the State of Michigan.

The above factor, alone, is sufficient to sustain jurisdiction.

CONCLUSION

For the reasons stated herein, the Petitioners' request for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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